

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

MACA.No. 721 OF 2004()

OPMV.820/2000 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR

APPELLANT/PETITIONER.

DAVIS ANTONY, S/O.OUSEPH,
RESIDING AT THOMMANA HOUSE,
MANNAMPETTA, THRISSUR DISTRICT.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SMT.M.R.VALSA
SMT.G.GEETHISHA

RESPONDENTS: RESPONDENTS.

1. T.C.SUKUMARAN, S/O,.CHATHAPPAN, R/A
THOPPIL HOUSE, ALOOR P.O.CHALAKUDY, THRISSUR
DISTRICT.
2. THE UNITED INDIA INSURANCE CO.LTD.,
BRANCH ALANGADAN BUILDINGS, TANA,
IRINJALAKUDA, THRISSUR DISTRICT.

R2 ADV. SRI.MATHEWS JACOB (SR.)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

== = == = == = == = == = == = == = == =

M.A.C.A. NO.721 OF 2004

== = == = == = == = == = == = == = == =

DATED THIS, THE 19TH DAY OF MARCH, 2007.

J U D G M E N T

Raman, J.

Though this matter was posted before the Adalath, the parties stated that the same could not be settled.

2. The appellant was the claimant in O.P.(MV) 820/2000 on the file of the Motor Accidents Claims Tribunal, Thrissur. While he was travelling in Auto rickshaw bearing Reg. No. KL-8/G/2975, a car having Reg. No. KLH-6667 driven by the first respondent came from the opposite direction and hit against the auto rickshaw, as a result of which he sustained serious injuries. The Tribunal found that the accident occurred due to the negligence on the part of the first respondent and that the appellant herein is entitled for compensation. An amount of Rs. 2,98,300/- was awarded as compensation under various heads with interest at the rate of 9% per annum. Claiming enhancement of compensation, he has come up in appeal.

3. It is contended that the income of the appellant was fixed as Rs. 60,000/- per annum, which is too low. Admittedly, the appellant did not

produce any piece of evidence to show his actual income, even though it was contended that he was working abroad and earning 300 Riyals per month. In the absence of any evidence, the Tribunal fixed an amount of Rs. 5,000/- per month as his income. We do not find in such circumstances, that the income as fixed by the court below is in any way erroneous.

4. The appellant had sustained injuries which are noted in para 19 of the award passed by the Tribunal, as follows:

- (1) Cut wound 4-5 cm. long over right tibial tuberosity.
- (2) Abrasions over left leg and left leg digits.
- (3) Fracture right clavicle.
- (4) Fracture distal end of left radius.
- (5) Fracture dislocation right hip.
- (6) Compound fracture right tibial shaft.

5. Though the doctor certified 28% disability, the appellant did not examine the doctor. Still the Tribunal fixed the disability at 15% and adopting the multiplier of 14 and taking his annual income as Rs. 60,000/- worked out the compensation for loss of earning power as Rs. 1,26,000/-. The appellant was aged 40 at the time of the accident and considering his age, we think that instead of 14, 15 should have been taken as the multiplier. Accordingly, adopting the multiplier of 15, we award Rs. 9,000/- more under this head.

6. Nextly it is contended that the compensation awarded towards

future medical expenses is too low. Only an amount of Rs. 3,000/- was awarded towards future medical expenses. The Tribunal, after referring to the injuries sustained by the appellant and discussing the other evidence in this regard, namely, the discharge summary issued to the appellant from various hospitals in which he underwent treatment etc., found that the appellant had sustained serious injuries in the accident. Considering the nature of the injury sustained and the treatment undergone by the appellant, there cannot be any doubt that the compensation awarded towards future medical expenditure is too low. We think in the factual situation, that the appellant will be entitled to Rs. 7,000/- more under this head. Thus a total amount of Rs. 16,000/- (sixteen thousand) is awarded as compensation in addition to the amount already awarded by the Tribunal.

The award passed by the Tribunal is modified as above. The appeal is partly allowed.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

MACA 721/2004

:4:

knc/-